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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/909,913	07/20/2001	Gary H. Anders	00-423	2400

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EXAMINER

BECKER, DREW E

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 04/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/909,913

Applicant(s)

ANDERS ET AL.

Examiner

Drew E. Becker

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 February 2005.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20, 27-42 and 92-103 is/are pending in the application.
- 4a) Of the above claim(s) 8, 12, 13, 28, 35, 36, 95, 96 and 102 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 9-11, 14-20, 27, 29-34, 37-42, 92-94, 97-101, 103 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. This application contains claims 8, 12-13, 28, 35-36, 95-96, and 102 are drawn to an invention nonelected with traverse in the response of August 16, 2004. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-3, 6-7, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Peterson et al [Pat. No. 4,467,497].

Peterson et al teach a method of treating foods by pressing meat between two pliable surfaces (Figure 1, #6 & 12; column 2, line 35) which conform and at least partially surround the meat, first and second surfaces (Figure 1, #7 & 13), and successive rollers providing a series of presses (Figure 1, #5 & 11). The pliable belts of Peterson et al would have inherently ruptured the meat collagen due to the use of identical materials and method steps.

4. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Klaassen [Pat. No. 5,176,071].

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Klaassen teaches a method of treating foods by pressing meat with a pliable surface (Figure 1, #5; column 3, line 9) which conforms and at least partially surrounds the meat, and infusing a liquid while impacting the meat (Figure 1, #4). The pliable roller of Klaassen would have inherently ruptured the meat collagen due to the use of identical materials and method steps.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-3, 6-7, 9-11, 27, 29, 31-34, 92-94, 101, and 103 are rejected under 35 U.S.C. 103(a) as being unpatentable over Margolis [Pat. No. 5,082,678] in view of Peterson et al.

Margolis teaches a method of treating foods by pressing boneless meats (column 4, line 52 to column 5, line 19), infusing a liquid into the meat (column 6, lines 5-28), a pressure of 2.5-12.0 psi (column 5, lines 10-19), the pressing means including rolling devices and pressure plates (column 4, line 52 to column 5, line 19), dipping the meat in the infusing liquid (column 6, lines 5-28), multiple presses (column 7, line 50), applying pressure during infusion (column 6, line 26), Margolis does not recite two pliable conveyor belt surfaces, and the belts being at least ½" thick. Peterson et al a method of treating foods by pressing meat between two pliable surfaces (Figure 1, #6 & 12;

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column 2, line 35) which conform and at least partially surround the meat, first and second surfaces (Figure 1, #7 & 13), and successive rollers providing a series of presses (Figure 1, #5 & 11). The pliable belts of Peterson et al would have inherently ruptured the meat collagen due to the use of identical materials and method steps. It would have been obvious to one of ordinary skill in the art to incorporate the pliable belts and rollers of Peterson et al into the invention of Margolis since both are directed to methods of pressing meat, since Margolis already included a pressing step which could be carried out by any means which was economical and efficient (column 4, line 52) as well as rolling presses (column 4, line 58), and since the belts and rollers of Peterson et al would have provided a more economical and efficient means for pressing as compared to the manual pressing of Margolis. It would have been obvious to one of ordinary skill in the art to provide belts at least ½" thick in the method of Peterson et al since belts were commonly made in this thickness and since a thick belt would have provided added durability and a longer service life.

7. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Margolis, in view of Peterson et al, as applied above, and further in view of Keszler [Pat. No. 3,663,233].

Margolis and Peterson et al teach the above mentioned concepts. Margolis and Peterson et al do not recite completely surrounding the food. Keszler teaches a method of pressing meat by surrounding it in a mold (Figures 1-2). It would have been obvious to one of ordinary skill in the art to incorporate the mold pressing of Keszler into the invention of Margolis, in view of Peterson et al, since all are directed to methods of

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pressing meat, since Margolis already included a pressing step which could be carried out by any means which was economical and efficient (column 4, line 52) as well as pressure plates (column 5, line 6), and since the mold of Keszler would have provided a more economical and efficient means for pressing as compared to the manual pressing of Margolis.

8. Claims 5 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Margolis, in view of Peterson et al and Keszler, as applied above, and further in view of Morley [Pat. No. 4,345,514].

Margolis, Peterson et al, and Keszler teach the above mentioned concepts. Keszler also teaches a plunger and a cavity (Figure 1, #10-12). Margolis, Peterson et al, and Keszler do not recite a covering. Morley teaches a method of pressing meat by placing a cover over the pressing means (Figure 3, #100). It would have been obvious to one of ordinary skill in the art to incorporate the cover of Morley into the invention of Margolis, in view of Peterson et al and Keszler, since all are directed to methods of pressing meat, since Margolis already included a pressing step which could be carried out by any means which was economical and efficient (column 4, line 52) as well as pressure plates (column 5, line 6), since the plunger and cavity of Keszler would have provided a more economical and efficient means for pressing as compared to the manual pressing of Margolis, and since the covering of Morley would have prevented the meat from sticking to the pressing means (column 4, line 10).

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9. Claims 14, 18, 37, 40, 97, and 99 are rejected under 35 U.S.C. 103(a) as being unpatentable over Margolis, in view of Peterson et al, as applied above, and further in view of Gould [Pat. No. 4,657,771].

Margolis and Peterson et al teach the above mentioned concepts. Margolis and Peterson et al do not recite impacting the meat during infusion and spiral flites. Gould teaches a method of treating meat by infusing it with liquid while impacting it with spiral flites (Figure 1, #24). It would have been obvious to one of ordinary skill in the art to incorporate the spiral flites of Gould into the invention of Margolis, in view of Peterson et al, since all are directed to methods of treating meat, since Margolis teaches using any means for infusion (column 6, line 5), and since the spiral flites of Gould would have provided advantages such as minimal bruising, uniform color and brine uptake, as well as minimal time requirements (column 2, line 62 to column 3, line 21).

10. Claims 19-20, 41-42, and 100 are rejected under 35 U.S.C. 103(a) as being unpatentable over Margolis, in view of Peterson et al and Gould, as applied above, and further in view of Ludwig [Pat. No. 5,564,332].

Margolis, Peterson et al, and Gould teach the above mentioned concepts. Margolis, Peterson et al, and Gould do not recite a paddle rotating opposite the spiral flites. Ludwig teaches a method of infusing meat with rotating paddles (Figure 6, #57) and the paddles operating in either direction (abstract). It would have been obvious to one of ordinary skill in the art to incorporate the paddles of Ludwig into the invention of Margolis, in view of Peterson et al and Gould, since all are directed to methods of treating meat, since Margolis teaches using any means for infusion (column 6, line 5),

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since Gould already included spiral flites (Figure 1, #24), and since the reversible paddles of Ludwig would have provided a convenient means for emptying the vessel (abstract) while also providing impacts to the meat.

11. Claims 14-16 and 37-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Margolis, in view of Peterson et al, as applied above, and further in view of Nordin [Pat. No. 3,347,679].

Margolis and Peterson et al teach the above mentioned concepts. Margolis and Peterson et al do not recite a submerged conveyor, impacting during infusion, and at least one pound of liquid per pound of meat. Nordin teaches a method of infusing meat by using a submerged conveyor (Figure 1, #14 & 16) and several times more liquid than meat (Figure 1, #8 & 10). It would have been obvious to one of ordinary skill in the art to incorporate the submerged conveyor of Nordin into the invention of Margolis, in view of Peterson et al, since all are directed to methods of treating meat, since Margolis teaches using any means for infusion (column 6, line 5), and since the submerged conveyor of Nordin provided more even distribution of liquid and quicker curing time (column 1, lines 56-60).

12. Claims 17, 39, and 98 are rejected under 35 U.S.C. 103(a) as being unpatentable over Margolis, in view of Peterson et al and Nordin, as applied above, and further in view of GB 957356.

Margolis, Peterson et al, and Nordin teach the above mentioned concepts. Margolis, Peterson et al, and Nordin do not recite flexible fingers. GB 957356 teaches a method of treating meat by impacting it with flexible fingers (Figure 4, #5). It would have been

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obvious to one of ordinary skill in the art to incorporate the flexible fingers of GB 957356 into the invention of Margolis, in view of Peterson et al and Nordin, since all are directed to methods of treating meat, since Margolis teaches using any means for infusion (column 6, line 5), since Nordin already included impacting fingers (Figure 1, #18), and since GB 957356 teaches that flexible fingers were more effective than stiff fingers (page 1, lines 26-75).

Response to Arguments

13. Applicant's arguments filed February 24, 2005 have been fully considered but they are not persuasive.

Applicants argue that Peterson et al do not teach "at least partially surrounding the meat". However, Peterson et al clearly disclose pressing meat between two pliable surfaces (Figure 1, #6 & 12; column 2, line 35) which conform and at least partially surround the meat. The limitation "at least partially surrounding the meat" would clearly be met by the upper and lower belts of Peterson et al since they "partially surround the meat" from both above and below.

Applicants argue that Peterson et al mangles and mashes the meat, rather than pressing it. However, the belts of Peterson et al clearly pressed the meat (column 1, line 39), regardless of the terminology used.

Applicants argue that the rubber and plastic belts of Peterson et al were not "pliable". However, rubber and plastic are materials that were commonly known to be "pliable" or flexible and would have inherently conformed to some degree to the meat.

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Furthermore, a flexible or pliable belt would be beneficial to Peterson et al by allowing passage of large meat pieces which otherwise would have clogged the device.

Applicants argue that the belts of Peterson et al "must resist deformation".

However, Peterson et al never makes this statement.

Applicants argue that Klaassen do not teach "at least partially surrounding the meat". However, Klaassen clearly discloses pressing meat with a pliable surface (Figure 1, #5; column 3, line 9) which conforms and at least partially surrounds the meat. The limitation "at least partially surrounding the meat" would clearly be met by the upper and lower surfaces of Klaassen since they "partially surround the meat" from both above and below.

Applicants argue that the elastic surfaces of Klaassen were not "pliable".

However, elastic materials were commonly known to be "pliable" or flexible and would have inherently conformed to some degree to the meat. Furthermore, a flexible or pliable surface would be beneficial to Klaassen by allowing passage of large meat pieces which otherwise would have clogged the device.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the

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claimed invention must be expressly suggested in any one or all of the references.

Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

Conclusion

14. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E. Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Fri. 8am-4:30pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Drew E Becker
Primary Examiner
Art Unit 1761


DREW BECKER
PRIMARY EXAMINER
4/13/05